

General Information Letter: Debt collection services are not protected by Public Law 86-272.

October 16, 2000

Dear:

This is in response to your letter dated September 13, 2000 in which you state the following:

xxxxxxxxxxxxxxxxxxxxxx (xxx) FEIN xx-xxxxxxx is requesting a Nexus ruling for the activity our company has in Illinois. xxx is a third-party debt collection agency which operates out of Oklahoma. Our clients are companies which hire us to collect on past-due debts from their customers some of which are located in Illinois. All of these collections are conducted from Oklahoma by an initial letter contact and then by telephone or fax. At no time do the collectors make contact by traveling to Illinois.

Any legal matters pertaining to these collections are not handled by xxx but are turned over to an Illinois licensed attorney for processing.

In a telephone conversation with Mr. Terry Reed of your department, he said as we do not have an office in Illinois, none of our clients are located in the state, and we do not have personnel who collect within Illinois he thinks our activity in Illinois may not constitute establishing nexus but suggested I write requesting a ruling on this question. I would appreciate a written ruling from the Illinois Department of Revenue from which xxx can base our reporting in the future.

As we applied for and received an IL Certificate of Authority on 6-22-98 and an IL-1120-ST was filed for 1998, I would appreciate your response to this inquiry directing the company as to our filing requirements in the future.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 201 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 et seq, imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. The Due Process and Commerce Clauses of the Federal Constitution limit the power of States to subject foreign corporations to tax. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction it seeks to tax (Quill Corp. v. North Dakota, 504 U.S. 298, 112 S.Ct. 1904 (1992)). Similarly, the Commerce Clause requires that the tax be applied to an activity with a substantial nexus with the taxing state. Id.

Unless protected by Public Law 86-272, a foreign corporation has the requisite nexus to subject it to Illinois income tax where any part of its income is allocable to Illinois in accordance with the

provisions of Article 3 of the Illinois Income Tax Act (35 ILCS 5/301-304, 308). Public Law 86-272 is a federal statute that prohibits a state's taxation of interstate sales of tangible personal property.

Activities relating to collections on past-due debts are not included in the protection provided under the aforementioned Public Law. Your letter indicates that your contacts with Illinois include mailings, telephone calls and when necessary, the hiring of attorneys to complete your collection process in court. The result of your activities in Illinois provides your corporation with income from Illinois residents. As such, a portion of your income may be allocable to Illinois in accordance with provisions of Article 3 of the IITA. Accordingly, the Federal Constitution may not bar Illinois from subjecting your corporation to Illinois income tax.

If a corporation does establish nexus, business income will be apportioned to Illinois under Section 304 of the IITA. Illinois has used the 3-factor apportionment formula that takes into consideration the (1) payroll, (2) property and (3) sales of a corporation. Beginning with taxable years ending December 31, 2000, only sales will be used. This change to a "single-sales factor" will be phased in over a two-year period. Since you have no payroll or property within Illinois, the change does not effect your corporation. Should you have "nexus" with Illinois, you would use the amount of money that is retrieved from Illinois compared to the amount retrieved from all other states.

The question of nexus is highly fact-dependent. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. Such a determination can only be made in the context of an audit where a Department auditor has access to all relevant facts and circumstances. For that reason, we are referring your correspondence along with a copy of this letter to the Audit Technical Support Services Division.

With respect to your question regarding our filing requirements, Section 502(a) of the IITA describes when an Illinois income tax return is required. Pursuant to Section 501(a), an Illinois income tax return is required in two situations. The first situation is when a taxpayer is liable for Illinois income tax. The second situation is, in the case of a corporation qualified to do business in Illinois, when the taxpayer is required to file a federal income tax return, regardless of whether such person is liable for Illinois income tax.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department.

Sincerely,

Heidi S. Scott
Staff Attorney – Income Tax